

Six Proposed Banking Amendments

Staff Note: Starred changes are requested by the NC Office of the Commissioner of Banks (NCCOB), and arrowed changes are clean-up changes suggested by GSC staff. In the opinion of GSC staff, all changes are technical, except for the deletion of the \$300,000 surety bond requirement in G.S. 45A-4(a)(7) by Amendment #1.

Amendment #1:

SECTION #. G.S. 45A-4 reads as rewritten:

“§ 45A-4. Duty of settlement agent.

(a) The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. A settlement agent may disburse funds from the settlement agent's trust or escrow account (to either the applicable register of deeds or directly to a private company authorized to electronically record documents with the office of the register of deeds) as necessary to record any deeds, deeds of trust, and any other documents required to be filed in connection with the closing, including excise tax (revenue stamps) and recording fees, but the settlement agent ~~may~~shall not disburse any other funds from its trust or escrow account until the deeds, deeds of trust, and other required loan documents have been recorded in the office of the register of deeds. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

- (1) A certified ~~check~~check.
- (2) A check issued by the State, the United States, a political subdivision of the State, or an agency or instrumentality of the United States, including an agricultural credit ~~association~~association.
- (3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state ~~government~~government.
- (4) A check drawn on the trust account of an attorney licensed to practice in ~~the State of North Carolina~~Carolina.
- (5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General ~~Statutes~~Statutes.
- (6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars (\$5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow ~~account~~account.
- (7) A check drawn on the account of or issued by a mortgage ~~banker~~lender licensed under Article ~~19A-19B~~19B of Chapter 53 of the General ~~Statutes that has posted with the Commissioner of Banks a surety bond in the amount of at least three~~

~~hundred thousand dollars (\$300,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check. Statutes.~~

(b) If the settlement agent receives information from the lender as provided in G.S. 45A-5(b) or otherwise has actual knowledge that a mortgage broker or other person acted as a mortgage broker in the origination of the loan, the settlement agent shall place an entry on page 1 of the deed of trust showing the name of the mortgage broker or other person ~~who~~ that acted as a mortgage broker in the origination of the loan. Information pertaining to the identity of the mortgage broker or other person ~~who~~ that acted as a mortgage broker in the origination of the loan ~~shall not be considered~~ is not confidential information. The ~~terms-term~~ "mortgage broker" ~~and "act as a mortgage broker"~~ shall have has the same meaning as provided in ~~G.S. 53-243.01. G.S. 53-244.030(19).~~ (1995 (Reg. Sess., 1996), c. 714, s. 1; 2001-420, ss. 1, 2; 2007-176, s. 1; 2014-115, s. 36.)

Explanation:

At the request of the NCCOB, this amendment does the following:

- In subdivision (a)(7),
 - Replaces "mortgage banker licensed under Article 19A of Chapter 53" with "mortgage lender licensed under Article 19B of Chapter 53". S.L. 2009-374 replaced Article 19A of Chapter 53 of the General Statutes (Mortgage Lending Act) with Article 19B of Chapter 53 of the General Statutes (The Secure and Fair Enforcement Mortgage Licensing Act). Section 5 of the session law is a transition provision and shows that the term "mortgage banker" was replaced with the term "mortgage lender".
 - Deletes the \$300,000 surety bond requirement. Under Article 19B, a licensed mortgage lender must post a surety bond in an amount related to the amount of mortgage loans it originates. *See* G.S. 53-244.103(b)(2). Under former Article 19A, a mortgage banker was required to post a surety bond of \$150,000. *See* former G.S. 53-243.05(f).
- In the last sentence of subsection (b), removes "act as a mortgage broker" and updates the reference to G.S. 53-243.01 with a reference to G.S. 53-244.030(19). G.S. 53-244.030 is the definitions section of the new Article 19B of Chapter 53 and replaced G.S. 53-243.01. "Act as a mortgage broker" is not a defined term in G.S. 53-244.030.

GSC staff question: Should the new reference be to G.S. 53-244.030? Generally speaking, when referencing a definition, the reference is not to the specific subdivision, since these subdivisions are sometimes recodified to maintain alphabetical order.

GSC staff suggests additional clean-up changes, including the following changes:

- In two places in subsection (b), replace "who" with "that" in the phrase "mortgage broker or other person who acted as a mortgage broker", because a mortgage broker can be an entity. *See* G.S. 53-244.040(b)(1).

Background Information:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-374
HOUSE BILL 1523**

**AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN ORDER
TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.**

Whereas, the General Assembly finds that activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this State's consumers, this State's economy, and the neighborhoods and communities of this State, and the housing and real estate industry; and

Whereas, North Carolina has had licensed mortgage loan originators and companies that employ them since 2002, and such licensure has been essential for the protection of the citizens of the State and the stability of the State's economy; and

Whereas, this legislation is necessary to bring North Carolina's mortgage lending laws into compliance with the Housing and Economic Recovery Act of 2008, Public Law 110-289, Title V, enacted by Congress and signed into law on July 30, 2008; Now, therefore,

The General Assembly of North Carolina enacts:

→ **SECTION 1.** Article 19A of Chapter 53 of the General Statutes is repealed.
SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 19B.
The Secure and Fair Enforcement Mortgage Licensing Act.

...

SECTION 5. Transition. – All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, as of the effective date of this act, shall maintain their status as licensees and shall be subject to the provisions of Article 19B, as enacted by Section 2 of this act, in accordance with the following transitional rules:

- (1) All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes as of the effective date of this act shall have the following licensed status:
 - a. Any person licensed as a loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage loan originator as defined in G.S. 53-244.030(21), as enacted by Section 2 of this act.
 - b. Any person licensed as a mortgage banker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage lender as defined in G.S. 53-244.030(20), as enacted by Section 2 of this act.
 - c. Any person licensed as a mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage broker as defined in G.S. 53-244.030(19).

- d. Any person licensed as a mortgage servicer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage servicer as defined in G.S. 53-244.030(22).
 - e. Any person licensed as an exclusive mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as an exclusive mortgage broker as defined in G.S. 53-244.030(11a), as enacted by Section 2 of this act; provided that the exclusive mortgage broker obtains a separate license as a mortgage loan originator no later than July 31, 2010, and if such license has not been obtained by that date, the license of the exclusive mortgage broker shall be subject to summary suspension.
 - f. Any person licensed as a limited loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be permitted to act as a licensed mortgage loan originator as defined in G.S. 53-244.030(21), as enacted by Section 2 of this act; provided that the limited loan officer obtains a mortgage loan originator license no later than December 31, 2009, and if such license has not been obtained by that date, the license of the limited loan officer will expire.
- (2) For the renewal period ending December 31, 2009, any person deemed a mortgage loan originator pursuant to sub-subdivision (1)a. of this section must have met the requirements of this act for renewal, including the initial license requirements of G.S. 53-244.060, except G.S. 53-244.060(5) and G.S. 53-244.060(6), provided that the mortgage loan originator would have met the requirements for continuing education under G.S. 53-243.07(b), as repealed by Section 1 of this act. After December 31, 2009, applicants for renewal must meet all requirements for renewal under G.S. 53-244.101.
 - (3) Persons who maintain a bond posted and accepted by the Commissioner as satisfying G.S. 53-243.05(f), as repealed by Section 1 of this act, shall be deemed to comply with the requirements of G.S. 53-244.103, as enacted by Section 2 of this act, through December 31, 2009.
 - (4) To the extent that loss mitigation specialists are included in the definition of a mortgage loan originator through an action by the U.S. Department of Housing and Urban Development, the Commissioner shall take necessary steps to license these individuals as mortgage loan originators in a timely fashion in a manner that ensures this act fulfills the requirements of the S.A.F.E. Act to maintain jurisdiction and supervision of the mortgage business to the fullest extent possible.
 - (5) Any person who has been enjoined by the Commissioner of Banks or a court of competent jurisdiction from serving in any capacity defined under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, shall not be allowed to apply for or act in any similar capacity as defined by G.S. 53-244.030, as enacted by Section 2 of this act. Any person whose license under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, was subject to any terms, conditions, or affirmative duties imposed by the Commissioner of Banks or a court of competent jurisdiction shall be subject to the same terms, conditions, or affirmative duties for any similar license issued under G.S. 53-244.060 or renewed under G.S. 53-244.101, as enacted by Section 2 of this act.

SECTION 6. Except as otherwise provided by Section 5 of this act, this act becomes effective July 31, 2009, and applies to all applications for licensure as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date.

In the General Assembly read three times and ratified this the 22nd day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:02 p.m. this 31st day of July, 2009

§ 53-244.103. Surety bond requirements.

(a) Except as provided in subsection (a1) of this section, each mortgage loan originator or transitional mortgage loan originator shall be covered by a surety bond through employment with a licensee in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator or transitional mortgage loan originator employed by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the requirements for the surety bonds as needed to accomplish the purposes of the Article.

(a1) The requirements of subsection (a) of this section shall not apply to a mortgage loan originator or transitional mortgage loan originator employed only by a registrant for the sole purpose of supervising and controlling loan processors or underwriters.

(b) Licensees shall be required to post a surety bond with the Commissioner at application to be subsequently adjusted as follows:

- (1) A mortgage broker shall post a minimum surety bond of seventy-five thousand dollars (\$75,000). Provided, however, if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the mortgage broker's minimum bond amount shall be one hundred twenty-five thousand dollars (\$125,000), and if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars (\$50,000,000) or more, the mortgage broker's minimum bond shall be two hundred fifty thousand dollars (\$250,000).
- (2) A mortgage lender or mortgage servicer shall post a minimum surety bond of one hundred fifty thousand dollars (\$150,000). Provided, however, if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the mortgage lender's minimum bond amount shall be two hundred fifty thousand dollars (\$250,000), and if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars (\$50,000,000) or more, then the mortgage lender's minimum bond shall be five hundred thousand dollars (\$500,000).

- (3) Any increased surety bond required under subdivision (1) or (2) of this subsection shall be filed with the Commissioner on or before May 31 immediately following the end of the 12-month December 31 period.

(c) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond. In this case, the licensee shall file a replacement bond in the required amount within 30 days. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

(d) In the Commissioner's discretion and upon written request of the licensee, the Commissioner may waive the requirement of the bond for any licensee, if:

- (1) The licensee has been licensed by the Commissioner for at least three years;
- (2) The licensee can demonstrate a net worth, according to the most recent audited financial statement, at least four times the required bond amount, and the licensee certifies that its net worth will be maintained at or above this level at all times and agrees to notify the Commissioner and to secure an appropriate bond in the event the net worth falls below this level;
- (3) The Commissioner believes the licensee has a satisfactory history of resolving complaints from consumers and responding to findings of investigations or examinations by the Commissioner; and
- (4) The Commissioner has no reason to believe the licensee will be unable to resolve complaints, respond to examination or investigative findings, or fulfill financial obligations under this Article.

(e) If the Commissioner has waived the bond requirement of a licensee based on subsection (d) of this section, the Commissioner may summarily reinstate the bond requirement on any licensee if the Commissioner has reason to believe the licensee no longer meets the standards in subsection (d) of this section. In this event, the licensee shall submit a bond, as required in subsection (b) of this section, within 30 days. Failure to submit a bond as directed by the Commissioner shall be grounds for summary suspension.

Amendment #2:

SECTION #. G.S. 53-249 reads as rewritten:

“§ 53-249. Filing and posting of loan fees; disclosures.

→ (a) Filing of Fee ~~Schedule.~~ Schedule. — On or before January 2 of each year, each registrant shall file with the Commissioner a schedule of the refund anticipation loan fees for refund anticipation loans to be facilitated by the registrant during the succeeding year. Immediately upon learning of any change in the refund anticipation loan fee for that year, the registrant shall file an amendment with the Commissioner setting out the change. Filing is effective upon receipt by the Commissioner.

→ (b) Notice of Unconscionable ~~Fee.~~ Fee. — If the Commissioner finds that a refund anticipation loan fee filed pursuant to subsection (a) is unconscionable, ~~he~~ the Commissioner shall notify the registrant that (i) in ~~his~~ the Commissioner's opinion the fee is unconscionable and (ii)

the consequences of charging a refund anticipation loan fee in an amount that the Commissioner has notified the registrant is unconscionable include liability to the debtor for three times the amount of that fee and possible revocation of registration as a facilitator after notice and a hearing.

→ (c) ~~Posting of Fee Schedule.~~ Schedule. – Every registrant shall prominently display at each office where the registrant is facilitating refund anticipation loans a schedule showing the current refund anticipation loan fees for refund anticipation loans facilitated at the office and the current electronic filing fees for the electronic filing of the taxpayer's tax return. Every registrant shall also prominently display on each fee schedule a statement to the effect that the taxpayer may have the tax return filed electronically without also obtaining a refund anticipation loan. No registrant may facilitate a refund anticipation loan unless (i) the schedule required by this subsection is displayed and (ii) the refund anticipation loan fee actually charged is the same as the fee displayed on the schedule and the fee filed with the Commissioner pursuant to subsection ~~(a)~~ (a) of this section.

→ (d) ~~Disclosures.~~ Disclosures. – At the time a debtor applies for a refund anticipation loan, the registrant shall disclose to the debtor on a form separate from the application:

- ★
- (1) ~~The fee for the loan.~~ refund anticipation loan fee.
 - (2) The fee for electronic filing of a tax return.
 - (3) The time within which the proceeds of the loan will be paid to the debtor if the loan is approved.
 - (4) That the debtor is responsible for repayment of the loan and related fees in the event the tax refund is not paid or is not paid in full.
 - (5) The availability of electronic filing of the taxpayer's tax return, along with the average time announced by the appropriate taxing authority within which a taxpayer can expect to receive a refund if the taxpayer's return is filed electronically and the taxpayer does not obtain a refund anticipation loan.
 - (6) Examples of the annual percentage rates, as defined by the Truth In Lending Act, 15 U.S.C. § 1607 and 12 C.F.R. Section 226.22, for refund anticipation loans of five hundred dollars (\$500.00), seven hundred fifty dollars (\$750.00), one thousand dollars (\$1,000), one thousand five hundred dollars (\$1,500), two thousand dollars (\$2,000), and three thousand dollars (\$3,000). Regardless of disclosures of the annual percentage rate required by the Truth In Lending Act, if the debtor is required to establish or maintain a deposit account with the creditor for receipt of the debtor's tax refund to offset the amount owed on the loan, the maturity of the loan for the purpose of determining the annual percentage rate disclosure under this section shall be assumed to be the estimated date when the tax refund will be deposited in the debtor's account."

Explanation:

At the request of the NCCOB, this technical amendment amends subdivision (d)(1) to use the term "refund anticipation loan fee," which is a defined term in G.S. 53-246, the definitions section for Article 20 of Chapter 53 (Refund Anticipation Loan Act). GSC staff suggests some clean-up changes.

Amendment #3:

SECTION #. G.S. 53-258 reads as rewritten:

“§ 53-258. Authority and procedures governing reverse mortgage loans.

(a) Except as provided in subsection (b1) of this section, no person, firm, or corporation shall engage in the business of making reverse mortgage loans without first being approved as an authorized reverse mortgage lender by the Commissioner. Mortgage lenders licensed under Article ~~19A~~ 19B of this Chapter must also be authorized under this Article before making reverse mortgage loans.

(b) An application for authorization to make reverse mortgage loans shall be in writing to the Commissioner and in the form prescribed by the Commissioner. The application shall contain the name and complete business address or addresses of the applicant. The application shall also include affirmation of financial solvency and all capitalization requirements that are required by the Commissioner. The application shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five hundred dollars (\$500.00).

(b1) Each of the following lenders shall be considered authorized to engage in the business of making reverse mortgage loans without being required to apply pursuant to subsection (b) of this section and may represent to the public that it is so authorized:

- (1) The North Carolina Housing Finance Agency.
- (2) A bank, savings institution, or credit union formed under the laws of this or any other state or of the United States.
- (3) A wholly owned subsidiary of an entity described in subdivision (2) of this subsection.

Each lender listed in this subsection may, upon written request to the Commissioner of Banks, obtain written confirmation of its authority to engage in the business of making reverse mortgage loans. In the case of lenders listed in subdivisions (2) and (3) of this subsection, the request shall be accompanied by the fee set forth in subsection (d) of this section.

(c) Repealed by Session Laws 2004-171, s. 16, effective October 1, 2004, and applicable to acts occurring and transactions or agreements entered into on or after that date.

(d) The Commissioner shall, upon determination that an applicant should be authorized to make reverse mortgage loans, issue notice of this authority to the lender. The authority to issue reverse mortgage loans is valid for the period of time specified by the Commissioner. A lender to whom a notice of authority is issued shall display the notice prominently in any and all offices of the lender that make reverse mortgage loans. Authorizations issued under this section are nontransferable. Except for lenders described in subsection (b1) of this section, each lender to which an authorization is issued shall pay an annual renewal fee of two hundred fifty dollars (\$250.00).”

Explanation:

At the request of the NCCOB, in subsection (a), this amendment replaces a reference to Article 19A of Chapter 53 of the General Statutes with a reference to Article 19B of Chapter 53 of the General Statutes. S.L. 2009-374 replaced Article 19A of Chapter 53 of the General Statutes (Mortgage Lending Act) with Article 19B of Chapter 53 of the General Statutes (The Secure and Fair Enforcement Mortgage Licensing Act).

Amendment #4:

SECTION #. G.S. 53-277 reads as rewritten:

“§ 53-277. Exemptions.

(a) This Article ~~shall~~does not apply ~~to~~to any of the following:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state; and state.~~

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, ~~who~~that either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars (\$2.00) is charged for the service.

(b) A person licensed under Article ~~46A-16B~~16B of this Chapter (Money Transmitters Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for purposes of the remaining provisions of this Article. This exemption does not apply to an authorized ~~agent~~delegate of a person licensed under Article ~~46A-16B~~16B of this Chapter.”

Explanation:

At the request of the NCCOB, in subsection (b), this amendment replaces references to Article 16A of Chapter 53 of the General Statutes with references to Article 16B of Chapter 53 of the General Statutes and replaces “authorized agent” with “authorized delegate.” S.L. 2016-81 replaced Article 16A with Article 16B, and Article 16B has “authorized delegate,” not “authorized agent,” as a defined term. *See* G.S. 53-208.42. “Money Transmitters Act” is the article heading of Article 16B. This amendment makes other clean-up changes.

Amendment #5:

SECTION #. G.S. 53-366 reads as rewritten:

“§ 53-366. Applicability of other laws to authorized trust institutions; status of State trust company.

(a) Except as otherwise provided in this Article, the following provisions of this Chapter and Chapter 53C of the General Statutes ~~shall~~apply to authorized trust institutions:

(1), (2) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(3) G.S. 53C-7-205.

(4) through (6) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(7) Article 8 of Chapter 53C of the General Statutes, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article ~~shall~~apply in lieu of: of the following provisions:

a. G.S. 53C-8-2.

b. G.S. 53C-8-3.

c. G.S. 53C-8-17.

(8), (9) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(10) Article 14 of this Chapter.

(11) G.S. 53C-2-7(b).

(b) Rules adopted by the Commissioner to implement those provisions of this Chapter made applicable to authorized trust institutions by subsection (a) of this section also ~~shall~~ apply to authorized trust institutions unless the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to trust business or trust marketing.

(c) Activities of authorized trust institutions for clients shall not be considered ~~the sale or issuance of checks~~ money transmission under Article ~~16-16B~~ of Chapter 53 of the General Statutes, Statutes or its successor.

(d) Until the Commissioner has issued new rules governing State trust companies, State trust companies ~~shall be~~ are governed by rules issued by the Commissioner for banks acting in a fiduciary capacity, except to the extent the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to the business of a State trust company.

(e) Notwithstanding any other provision of this Chapter, a State trust ~~company~~; company is all of the following:

(1) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(2) ~~Is a~~ A "bank" for purposes of laws made applicable to authorized trust institutions in this section and for purposes of G.S. 53-277.

(3) ~~Is a~~ A trust company organized and doing business under the laws of ~~the State of~~ North Carolina, a substantial part of the business of which is exercising fiduciary powers similar to those permitted national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by the Commissioner as a banking ~~institution~~; and institution.

(4) ~~Is a~~ A financial institution similar to a bank.

(f) In the case of a State trust company controlled by a company that has declared itself to be a "financial holding company" under 12 U.S.C. § 1843(l)(1)(C)(i), deposits held for an account shall be deemed to be "trust funds" within the meaning of 12 U.S.C. § 1813(p) unless all fiduciary duties with respect to the account are explicitly disclaimed. This subsection does not prescribe the nature or extend the scope of any fiduciary duties; the nature and extent of any fiduciary duties with respect to deposits held for accounts ~~shall be~~ are as provided by the instruments and laws applicable to those accounts.

(g) Subject to any limitations contained in this Article, an authorized trust institution is a "trust ~~company~~", company, a "corporate ~~trustee~~", trustee, a "corporate ~~fiduciary~~", fiduciary, and a "corporation acting in a fiduciary ~~capacity~~", capacity, as ~~such~~ these and similar terms are used in the General Statutes, except where it clearly appears from the context in which those terms are used that a different meaning is intended."

Explanation:

At the request of the NCCOB, in subsection (c), this amendment replaces a reference to Article 16 of Chapter 53 of the General Statutes with a reference to Article 16B of Chapter 53 of the General Statutes or its successor. S.L. 2001-443 replaced Article 16 with Article 16A, and S.L. 2016-81 replaced Article 16A with Article 16B. This amendment also replaces "the sale or issuance of checks" with "money transmission," which is a defined term for Article 16B. *See* G.S. 53-208.42. GSC staff suggests additional clean-up changes.

Amendment #6:

SECTION #. G.S. 66-106 reads as rewritten:

“§ 66-106. Definitions.

(a) For purposes of this ~~Article~~ Article, the following definitions apply:

(1) ~~A "loan broker" is any person, firm, or corporation who, in return for any consideration from any person, promises to (i) procure for such person, or assist such person in procuring, a loan from any third party; or (ii) consider whether or not it will make a loan to such person.~~

(2)(1) A "loan" is an agreement to advance money or property in return for the promise to make payments therefor, whether ~~such the~~ agreement is styled as a loan, credit card, line of credit, a lease or otherwise.

(2) A "loan broker" is any person, firm, or corporation that, in return for any consideration from any person, promises to do any of the following:

a. Procure for the person, or assist the person in procuring, a loan from any third party.

b. Consider whether or not it will make a loan to the person.

(b) Except for residential mortgage loans as defined in ~~G.S. 53-243.01~~, G.S. 53-244.030, this Article ~~shall~~ does not apply to any party approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a National Mortgage Association or any federal agency; nor to any party currently designated and compensated by a North Carolina licensed insurance company as its agent to service loans it makes in this State; nor to any insurance company registered with and licensed by the North Carolina Insurance Commissioner; nor, with respect to residential mortgage loans, to any residential mortgage ~~banker-lender~~ lender or mortgage broker licensed pursuant to ~~Article 19A-19B~~ of Chapter 53 of the General Statutes or exempt from licensure pursuant to ~~G.S. 53-243.01(12) and G.S. 53-243.02~~; G.S. 53-244.040; nor to any attorney-at-law, public accountant, or dealer registered under the North Carolina Securities Act, acting in the professional capacity for which ~~such the~~ attorney-at-law, public accountant, or dealer is registered or licensed under the laws of ~~the State of North Carolina~~. ~~Provided further that subdivision (1)(ii) above shall~~ Sub-subdivision (2)b. of this section does not apply to any lender whose loans or advances to any person, firm-firm, or corporation in North Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar year.

Explanation:

The NCCOB reports that it discussed the starred changes with the Secretary of State's Office, which administers Article 20 of Chapter 66 of the General Statutes, and that the Secretary of State's Office authorized the NCCOB to proceed.

At the request of the NCCOB, in subsection (b), this amendment updates language to reflect that S.L. 2009-374 replaced Article 19A of Chapter 53 of the General Statutes (Mortgage Lending Act) with Article 19B of Chapter 53 of the General Statutes (The Secure and Fair Enforcement Mortgage Licensing Act). Specifically, it does the following:

- Replaces a reference to a definition in G.S. 53-243.01 with a reference to its successor definition in G.S. 53-244.030. Please note that "residential mortgage loan" and "mortgage loan" are alternative terms for the same definition in G.S. 53-244.030.
- Replaces a "any residential mortgage banker . . . licensed pursuant to Article 19A of Chapter 53" with "any residential mortgage lender . . . licensed pursuant to Article 19B of Chapter 53". Section 5 of S.L. 2009-374 is a transition provision and shows that the term "mortgage banker" was replaced with the term "mortgage lender".
- Replaces a reference to G.S. 53-243.01(12) and G.S. 53-243.02 with a reference to G.S. 53-244.040, which contains the current language regarding exemptions.

GSC Staff Question: Should the reference be to G.S. 53-244.040(d)?

This amendment also makes the following clean-up changes:

- Places definitions in alphabetical order and tabulates a list.
- Replaces legalese with plain English.
- Shortens phrases in accordance with this State's drafting conventions.
- Fixes punctuation.

Background information:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-374
HOUSE BILL 1523**

**AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN ORDER
TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.**

Whereas, the General Assembly finds that activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this State's consumers, this State's economy, and the neighborhoods and communities of this State, and the housing and real estate industry; and

Whereas, North Carolina has had licensed mortgage loan originators and companies that employ them since 2002, and such licensure has been essential for the protection of the citizens of the State and the stability of the State's economy; and

Whereas, this legislation is necessary to bring North Carolina's mortgage lending laws into compliance with the Housing and Economic Recovery Act of 2008, Public Law 110-289, Title V, enacted by Congress and signed into law on July 30, 2008; Now, therefore,

The General Assembly of North Carolina enacts:

→ **SECTION 1.** Article 19A of Chapter 53 of the General Statutes is repealed.
SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 19B.
"The Secure and Fair Enforcement Mortgage Licensing Act.

...

SECTION 5. Transition. – All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, as of the effective date of this act, shall maintain their status as licensees and shall be subject to the provisions of Article 19B, as enacted by Section 2 of this act, in accordance with the following transitional rules:

- (1) All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes as of the effective date of this act shall have the following licensed status:
 - a. Any person licensed as a loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage loan originator as defined in G.S. 53-244.030(21), as enacted by Section 2 of this act.
 - b. Any person licensed as a mortgage banker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage lender as defined in G.S. 53-244.030(20), as enacted by Section 2 of this act.
 - c. Any person licensed as a mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage broker as defined in G.S. 53-244.030(19).
 - d. Any person licensed as a mortgage servicer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage servicer as defined in G.S. 53-244.030(22).
 - e. Any person licensed as an exclusive mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as an exclusive mortgage broker as defined in G.S. 53-244.030(11a), as enacted by Section 2 of this act; provided that the exclusive mortgage broker obtains a separate license as a mortgage loan originator no later than July 31, 2010, and if such license has not been obtained by that date, the license of the exclusive mortgage broker shall be subject to summary suspension.
 - f. Any person licensed as a limited loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be permitted to act as a licensed mortgage loan originator as defined in G.S. 53-244.030(21), as enacted by Section 2 of this act; provided that the limited loan officer obtains a mortgage loan originator license no later than December 31, 2009, and if such license has not been obtained by that date, the license of the limited loan officer will expire.
- (2) For the renewal period ending December 31, 2009, any person deemed a mortgage loan originator pursuant to sub-subdivision (1)a. of this section must have met the requirements of this act for renewal, including the initial license requirements of G.S. 53-244.060, except G.S. 53-244.060(5) and G.S. 53-244.060(6), provided that the mortgage loan originator would have met the requirements for continuing education under G.S. 53-243.07(b), as repealed by Section 1 of this act. After December 31, 2009, applicants for renewal must meet all requirements for renewal under G.S. 53-244.101.
- (3) Persons who maintain a bond posted and accepted by the Commissioner as satisfying G.S. 53-243.05(f), as repealed by Section 1 of this act, shall be deemed to comply with the requirements of G.S. 53-244.103, as enacted by Section 2 of this act, through December 31, 2009.
- (4) To the extent that loss mitigation specialists are included in the definition of a mortgage loan originator through an action by the U.S. Department of Housing and Urban Development, the Commissioner shall take necessary steps to

license these individuals as mortgage loan originators in a timely fashion in a manner that ensures this act fulfills the requirements of the S.A.F.E. Act to maintain jurisdiction and supervision of the mortgage business to the fullest extent possible.

- (5) Any person who has been enjoined by the Commissioner of Banks or a court of competent jurisdiction from serving in any capacity defined under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, shall not be allowed to apply for or act in any similar capacity as defined by G.S. 53-244.030, as enacted by Section 2 of this act. Any person whose license under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, was subject to any terms, conditions, or affirmative duties imposed by the Commissioner of Banks or a court of competent jurisdiction shall be subject to the same terms, conditions, or affirmative duties for any similar license issued under G.S. 53-244.060 or renewed under G.S. 53-244.101, as enacted by Section 2 of this act.

SECTION 6. Except as otherwise provided by Section 5 of this act, this act becomes effective July 31, 2009, and applies to all applications for licensure as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date.

In the General Assembly read three times and ratified this the 22nd day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:02 p.m. this 31st day of July, 2009

§ 53-244.040. License and registration requirements.

(a) Except as provided in subsection (d) of this section, no person may engage in the mortgage business or act as a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining a license under this Article. It shall be unlawful for any person, other than an exempt person or a person licensed as a transitional mortgage loan originator, to act as a mortgage loan originator without a mortgage loan originator license, which authorizes an individual who is employed by a licensee holding a license as provided in subsection (b) of this section to conduct the business of a mortgage loan originator.

(a1) In anticipation of satisfaction of all requirements necessary to obtain a license as a mortgage loan originator under this Article, a transitional mortgage loan originator license may be granted to an individual who has an active license to originate mortgage loans pursuant to the laws of any state or territory of the United States other than North Carolina, provided the individual registers, is fingerprinted, and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry at the time the individual submits a transitional mortgage loan originator application to the Commissioner. A transitional mortgage loan originator license may

also be issued to a registered loan originator for the purpose of satisfying all requirements necessary to obtain a license as a mortgage loan originator under this Article if permitted by a guideline, rule, regulation, or interpretive letter which clarifies section 1503 of Title V of the Housing and Economic Recovery Act of 2008, P.L. 110-289, and only to the extent of such an issuance or determination.

(b) Four types of licenses are granted to entities under this Article, and it shall be unlawful for any person, other than an exempt person, to engage in the mortgage business without one of the following licenses:

- (1) A mortgage broker license authorizes a person to act as a mortgage broker as defined in G.S. 53-244.030(19).
- (2) A mortgage lender license authorizes a person to act as a mortgage lender as defined in G.S. 53-244.030(20), a mortgage broker as defined under G.S. 53-244.030(19), and upon notice to the Commissioner, a mortgage servicer as defined in G.S. 53-244.030(22).
- (3) A mortgage servicer license authorizes a person to act only as a mortgage servicer as defined in G.S. 53-244.030(22).
- (4) An exclusive mortgage broker license authorizes a person to act as an exclusive mortgage broker as defined in G.S. 53-244.030(11a).

(c) Each mortgage loan originator and person engaged in the mortgage business must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(c1) A registrant operating in this State must register with the Commissioner. Upon issuance of the registration, a registrant is authorized to sponsor and employ licensed mortgage loan originators or transitional mortgage loan originators to control and supervise the registrant's loan processors or underwriters in accordance with Title V of the Housing and Economic Recovery Act of 2008, P.L. 110-289, and 24 C.F.R. 3400. Nothing in this subsection shall be construed as authorizing a registrant to engage in the mortgage business.

(d) The following are exempt from all provisions of this Article except the provisions of G.S. 53-244.111:

- (1) Registered mortgage loan originators as defined in G.S. 53-244.030(29);
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual when making the family member a residential mortgage loan;
- (3) Any individual seller who offers or negotiates terms and makes a residential mortgage loan secured by the dwelling that served as the selling individual's residence;
- (4) An attorney licensed pursuant to Chapter 84 of the General Statutes who negotiates the terms of a residential mortgage loan on behalf of a client in the course of and incident to the attorney's representation of the client, so long as the attorney does not hold himself out as engaged in the mortgage business and is not compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator when negotiating the terms of a residential mortgage loan;
- (5) Any entity described in G.S. 53-244.030(29)a., b., or c., upon acceptance of the notice of exemption filed with the Commissioner as specified in G.S. 53-244.050(g);

- (6) Any officer or employee of an entity described in subdivision (5) of this subsection when acting within the scope of his or her employment;
- (7) A State or federally chartered credit union, upon filing of a notice of exemption with the Administrator of the Credit Union Division of the Department of Commerce as specified in G.S. 53-244.050(g); or
- (8) Any person who, as seller, receives in one calendar year no more than five residential mortgage loans as security for purchase money obligations, unless the United States Department of Housing and Urban Development has expressly and definitively determined that such persons are loan originators as the term is defined by § 1503 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and such determination is in effect on July 31, 2010.

(e) Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article, or registrant registered under this Article, shall have a qualifying individual who operates the business under that person's full charge, control, and supervision. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article, or registrant registered under this Article, shall file through the Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of a qualifying individual and each qualifying individual's acceptance of the responsibility. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article, or registrant registered under this Article, shall notify the Commissioner within 15 days of any change in its designated qualifying individual. Any individual licensee who operates as a sole proprietorship shall qualify as and be considered the qualifying individual for the purposes of this subsection.

(f) Mortgage lenders and mortgage brokers may not operate branch offices, except as permitted by this Article. Each principal office and each branch office of a mortgage broker or mortgage lender licensed under this Article shall have a branch manager who meets the experience requirements under G.S. 53-244.050(b). The qualifying individual for a licensee's business also may serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage lender licensed under this Article shall file through the Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of branch manager for each branch. Each mortgage broker or mortgage lender licensed under this Article shall notify the Commissioner within 15 days of the change of any branch manager.